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Attorneys for Plaintiff and Counter-Defendant
e.Digital Corporation

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

e.Digital Corporation,
Plaintiff,

v.

Research In Motion Limited dba
BlackBerry; Research In Motion
Corporation dba BlackBerry,
Defendants.

Case No. 3:13-cv-00781-DMS-WVG

REDACTED

**PLAINTIFF E.DIGITAL
CORPORATION'S OBJECTION TO
DECLARATION OF KENT W.
SERRATT (SUBMITTED IN
SUPPORT OF E.DIGITAL'S
OPPOSITION TO NOTICE OF
MOTION AND MOTION TO
DISMISS UNDER FED. R. CIV. P.
12(C))**

Research In Motion Limited dba
BlackBerry; Research In Motion
Corporation dba BlackBerry,

Counterclaimants,

v.

e.Digital Corporation,

Counter-Defendant.

Date: August 2, 2013

Time: 1:30 P.M.

Judge: Hon. Judge Dana M. Sabraw

Ctrm: 13A (Annex)

1 Plaintiff and Counter-Defendant e.Digital Corporation (“Plaintiff” or
 2 “e.Digital”) submits the following evidentiary objections to the “Declaration Of
 3 Kent W. Serratt In Support Of Blackberry's Motion To Dismiss Under Fed. R. Civ.
 4 P. 12(c) And Supporting Memorandum” filed on July 10, 2013 (“Serratt Decl.”).
 5 (Dkt# 39-7).

6 Plaintiff requests that the Court strike and/or not consider the declaration or
 7 its contents when ruling on Defendants’ Motions to Dismiss Under Fed. R. Civ. P
 8 12(c) (“Motion”), set to be heard on or about August 2, 2013 at 1:30 p.m. The
 9 grounds for this request are set forth herein.

10 **OBJECTIONS:**

11 **I. Paragraph 2: “The BlackBerry Z10 includes a 16 GB flash**
 12 **memory.”**

13 **Objection:** The statement is outside the scope of the pleadings and not
 14 subject to judicial notice. *See Hal Roach Studios, Inc. v. Richard Feiner & Co.,*
 15 *Inc.*, 896 F.2d 1542, 1550 (9th Cir. 1990). The declarant has failed to establish
 16 personal knowledge of the fact alleged. Federal Rules of Evidence (“FRE”), Rules
 17 601, 602. The statement is irrelevant, lacks foundation, and is hearsay, for which
 18 no exception exists. FRE 401, 402, 602, 801, and/or 802.

19 **II. Paragraph 3: “BlackBerry obtains the 16 GB flash memory**
 20 **for the Z10 phone.”**

21 **Objection:** The statement is outside the scope of the pleadings and not
 22 subject to judicial notice. *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*,
 23 *supra* at 1550. The declarant has failed to establish personal knowledge of the fact
 24 alleged. FRE 601, 602. The statement is irrelevant, lacks foundation, and is
 25 hearsay, for which no exception exists. FRE 401, 402, 602, 801, and/or 802.

26 **III. Paragraph 4: “BlackBerry does not ship the Z10 phone with any**
 27 **removable microSD flash memory for sale in the United States.”**

28 **Objection:** The statement is -2- outside the scope of the pleadings and

not subject to judicial notice. *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, *supra* at 1550. The declarant has failed to establish personal knowledge of the fact alleged. FRE 601, 602. The statement is irrelevant, lacks foundation, and is hearsay, for which no exception exists. FRE 401, 402, 602, 801, and/or 802.

IV. Paragraph 5: “BlackBerry did not receive any pre-filing notice from e.Digital of the alleged patent infringement of the Asserted Patents prior to the filing of e.Digital’s Complaint”

Objection: The statement is outside the scope of the pleadings and not subject to judicial notice. *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, *supra* at 1550. The declarant has failed to establish personal knowledge of the fact alleged. FRE 601, 602. The statement is irrelevant, lacks foundation, and is hearsay, for which no exception exists. FRE 401, 402, 602, 801, and/or 802.

Respectfully submitted.

July 19, 2013

HANDAL & ASSOCIATES

By: /s/ Gabriel G. Hedrick
 Anton N. Handal
 Gabriel G. Hedrick
 Pamela C. Chalk
 Attorneys for Plaintiff
 E.DIGITAL CORPORATION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served on this date to all counsel of record, if any to date, who are deemed to have consented to electronic service via the Court's CM/ECF system per CivLR 5.4(d). Any other counsel of record will be served by electronic mail, facsimile and/or overnight delivery upon their appearance in this matter.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct. Executed this 19th day of July, 2013 at San Diego, California.

/s/ Gabriel G. Hedrick
Gabriel G. Hedrick